

HEIRS OF HENRY LEEF.

JULY 6, 1898.—Ordered to be printed.

Mr. FAIRBANKS, from the Committee on Claims, submitted the following

ADVERSE REPORT.

[To accompany S. 1612.]

The Committee on Claims, to whom was referred the bill (S. 1612) for the relief of the heirs of Henry Leef, deceased, owner of the bark *Mary Teresa*, illegally seized by Alexander H. Tyler, consul of the United States, at Bahia, Brazil, have considered the same and report:

This claim was investigated and adverse report thereon submitted by the Senate Committee on Claims at the second session of the Forty-sixth Congress and the second session of the Forty-eighth Congress. All the essential facts and the conclusions thereon are set forth in the report of the committee at the second session of the Forty-eighth Congress, a copy of which is hereto appended and made a part of this report.

Your committee are satisfied as to the entire soundness of the conclusions set forth in that report, and therefore report back the bill with the recommendation that it do not pass.

[Senate Report No. 1049, Forty-eighth Congress, second session.]

The Committee on Claims, to whom was referred the bill (S. 523) for the relief of Juliet Leef, widow, and the heirs of Henry Leef, deceased, owner of the bark *Mary Teresa*, illegally seized by Alexander H. Tyler, consul of the United States at Bahia, Brazil, have examined the same, and respectfully report:

That this claim was carefully investigated and adversely reported upon by the Senate Committee on Claims at the second session of the Forty-sixth Congress. All the material facts of the case are correctly set forth in the views then submitted by a minority of the committee, as follows:

That the history and character of this claim, as appears from the memorial and papers accompanying the same, are as follows, viz:

That this same bark, *Mary Teresa*, was a vessel of foreign build, having been built in Bordeaux in the year 1835, and was navigated as a French vessel under the name of *Veloz Manuela*, by B. C. Collos, master, &c., and while bearing the name of *Veloz Manuela*, and mastered by B. C. Collos, and navigated as a French bark or vessel on a voyage from Philadelphia, Pa., to Baltimore, Md., in the United States, she sus-

tained very considerable damage in the hull and loss of spars, sails, and rigging; so much so that, after a careful survey and examination by competent surveyors, &c., she was condemned as unseaworthy, and by them directed to be sold for account of whom it might concern, which was accordingly done at public auction, in the said city of Baltimore, on the 23d day of June, 1847, by Robert R. Lenmons & Co., duly commissioned and qualified auctioneers in said city, and by and with the consent and approval of the French consul at Philadelphia and B. C. Collos, master, &c.; that at said public sale of the said French bark *Veloz Manuela*, of Bordeaux, Joseph Daiger, jr., being the highest and last bidder, became the purchaser for the consideration and sum of \$950, upon the payment of which said sum the said bark *Veloz Manuela* was delivered to the said Daiger, jr., a citizen of the United States, together with a bill of sale from the said Collos, duly executed, delivered, and acknowledged on the said 23d day of June, 1847; all of which will more fully appear from a copy of the minutes of the French consul at Baltimore and the bill of sale of the said Collos, master, &c., and with the papers marked S; that the said Joseph Daiger, jr., the purchaser aforesaid, and sole owner of the said French bark or vessel called *Veloz Manuela*, of the burthen of two hundred and two $\frac{3}{4}$ French tons, in consideration of the sum of fifteen hundred dollars, lawful money of the United States, to him in hand paid on 19th day of July, 1847, by bill of sale in writing, sold and conveyed the said bark *Veloz Manuela* to Henry Leef, in his lifetime, but since deceased, at the time a citizen of the city of Baltimore, in the State of Maryland; and the said bill of sale was duly and properly executed and acknowledged by the said Daiger, and delivered to the said Leef; that the said Daiger and Leef were both shown in and upon the said bill of sale of Daiger to Leef to be citizens of the United States, as it will fully appear by reference thereto, for this and all needful purposes of this report, said bill of sale being marked D and S, and with the papers.

It appears from a letter of Robert J. Walker, then the Secretary of the Treasury of the United States, bearing date the 15th day of July, 1847, being a point of time between the sale of the French bark *Veloz Manuela* to Joseph Daiger, jr., and the sale of the same vessel by said Daiger to the said Henry Leef, that he, the said Leef, as it is fair to presume, looking to the purchase, navigation, and resale of the said vessel, but dependent upon the fact whether the same could be navigated and sent to a foreign port for sale, addressing a letter of inquiry to Secretary Walker, in substance (as quoted by him, Walker, in speaking of the said vessel *Veloz Manuela*) as follows:

"What documents is she entitled to, as the property of an American citizen, to represent her in a foreign port, and in the absence of a register? What claim would she have on the respect of foreign governments and on the protection of the representatives of the United States Government in foreign ports? Also, on what terms merchandise can be imported into the United States by her?"

In reply, Secretary Walker said:

"I have to inform you that this being a foreign-built vessel she can not receive papers of any description under the register or license laws of the United States, as the fact of her being at this time the property of a citizen of the United States gives her no American character under the laws referred to. As to her treatment in foreign ports, the consul of the country presiding at your port, to which it is proposed to send her, can doubtless afford you information on this point. If this vessel enters any port in the United States coming from a foreign port, without having papers issued by some foreign government whose vessels are placed on equal footing by law or treaty with vessels of the United States, said vessel would be liable to the payment of discriminating duties on her tonnage and cargo."

All of which appear in said letter of said Secretary, marked Walker, and here referred to.

It seems from the papers on file with this application to Congress for settlement and payment, that in this character of vessel and ownership, the owner wishing to send her to a foreign port for sale, that while he can not have her registered or licensed, yet the owner may apply to the collector of customs at the port where the vessel is, and upon his (own) request the said collector shall record the bill of sale in the books of the custom-house, and indorse the fact upon the bill of sale and return the same to the owner, which, when done, is prima facie evidence of the ownership and nationality of the vessel, and entitled her to bear the flag and receive the protection of the United States, which appears to have been done in this case; but that the right of such vessel to engage in foreign waters depends on the *lex loci* which from the papers the said Leef had obtained from the Brazilian consul at Baltimore and Brazilian ports the proper papers or documents to do so. Thus it appears the said Leef, before the date of his bill of sale of the said bark *Veloz Manuela*, had taken the precaution to ascertain those facts, and, as it is fair to presume, acted upon them, and, so relying, purchased the said French bark, repaired her at considerable cost and expense with the view of sending her to foreign ports for sale, and also, by the permission of foreign consuls, to send her into their waters and ports with certain articles of trade.

To this end, after the necessary repairs being done and the said vessel rendered

seaworthy, the said Leef entered into shipping articles with J. M. Cook as captain and William J. Woodyly and others as crew of said vessel or bark, by dropping the name of *Veloz Manuela* and taking the name of *Mary Teresa*, of Baltimore, which will appear from said agreement, dated August the 16th to the 25th, 1847, which said articles are here referred to and marked E. The said vessel *Mary Teresa*, formerly *Veloz Manuela*, having placed certain cargoes on board at the port of Baltimore, her captain and master, the said J. M. Cook, delivered and placed with the collector of the district of Baltimore a report and manifest of the cargo at said port of Baltimore on board, and bound from said port of Baltimore to Port Walthall, Va., bearing date the 27th day of August, 1847, as appears from manifest marked M, which is here referred to; that on the 30th day of August, 1847, to the end of selling said bark *Mary Teresa* and her cargo, and in all things control and dispose of the same, the said Henry Leef, by his power of attorney in writing of that date, constituted and appointed one John McKee supercargo thereof, and placed him in charge of the said bark and cargo, which will more fully appear from said power of attorney with American and Brazilian certificates, and here referred to and marked P; that, being thus purchased, recorded, indorsed, reported, refitted, ladened, officered, and manned, the said *Mary Teresa* regularly cleared for the port at Richmond, Va., and there taking on a further cargo of flour cleared said port of Richmond, Va., on the 9th day of September, 1847, and bound for Pernambuco, as appears from the certificates of the collector at that port (Richmond) and the Brazilian consul at Richmond, Va., and marked A and B. Under these proceedings the said *Mary Teresa*, navigated by said captain and crew, reached Pernambuco safely and unmolested on the 16th November, 1847, and was certified by the United States consul at that port that the said vessel *Mary Teresa* was navigated according to the laws of the United States, as appears from his certificate of that date, and with the papers, marked C and here referred to. Also the certificate of the American consul at the port of Pernambuco that Henry Leef was the owner of said vessel, bearing date 16th November, 1847, which is likewise referred to and marked L.

Failing to dispose of said vessel and all of her cargo at Pernambuco, she cleared said port for Bahia, as a better market, on the 17th day of November, 1847, as will appear from the certificate of the collector of that port, and of that date, and with the papers, and marked F and here referred to.

Upon the said *Mary Teresa* reaching the port of Bahia, which was between the 16th of November, the day she cleared the port of Pernambuco, and the 24th day of November, 1847, to wit, on the 21st November, 1847, and reporting her arrival to the American consul, Alexander H. Tyler, at that port, and furnishing him, the said Tyler, as such consul, with her navigating papers from and inclusive of those from the ports of Baltimore, Richmond, and Pernambuco, and including bill of sale with indorsements, and all the papers of the captain, crew, and supercargo, manifests, clearances, &c., he, the said Tyler, consul aforesaid, then and there, instead of offering the said *Mary Teresa*, her owner, supercargo, captain, crew, and cargo, the protection to which she was entitled under the laws and flag of the United States, which was his duty to do, seized said vessel, *Mary Teresa*, and took coercive possession of said vessel and cargo, declaring that she, the said *Mary Teresa*, should have been furnished with an American register and certified crew list; and in the absence of those papers, he, the said Tyler, pronounced her, the said *Mary Teresa*, to be confiscated to the Government of the United States; and this done by him as the consul of, and in the name and for the use of, the United States, demanding, taking, and receiving, and possessing himself with all the papers and documents of, belonging to, and concerning the said vessel, owner, captain, crew, and supercargo, and cargo; all and more of which will appear in the papers herewith filed, and here referred to and marked G, being a list of some of the papers and documents belonging to said vessel, and dated 24th November, 1847.

It appears that the supercargo had sold, upon reaching or while at Bahia, the said bark *Mary Teresa* to a citizen of Montevideo, and that the consul residing at Bahia had received orders from the minister of his Government, residing at Rio de Janeiro, to give her the flag of that country, whereupon the said Tyler, as consul aforesaid, intercepted and prevented the consummation of said sale by notifying the consul at Bahia that the vessel *Mary Teresa* could not be sold or otherwise disposed of without presenting a paper from him dated after that date, as will appear from his letter to said consul, dated 24th of December, 1847, marked T, and here referred to.

The said Tyler, consul as aforesaid, on the 3d of December, 1847, wrote to David Tod, minister at Rio de Janeiro, for suggestion and advice as to his conduct in the matter of the *Mary Teresa*, stating that the supercargo wished to carry said vessel to that port. Minister Tod, by letter dated the 11th of December, 1847, informed the said Tyler that the case was new to him, but that he would examine the matter, but advised the said Tyler to suffer the vessel to come on to that port, Rio de Janeiro, and that he (Tod) would confer with the consul at that port as to the proper course to pursue with said vessel.

On the 19th January, 1848, John McKee, supercargo, addressed a letter to the said Tyler, in which is recited the facts and circumstances of the seizure of the vessel and the conduct of the said Tyler, as consul of the United States, and that he had abandoned said vessel to him as such consul, with notification that he, owner, and crew protested against his (Tyler's) action in the premises as the representative of the United States, with notification of a claim of thirty thousand dollars accruing to those concerned in said vessel and cargo, furnishing therewith an inventory of the stores, furniture, and appurtenances. On the 19th day of February, 1848, the said Tyler, as consul aforesaid, dispatched said vessel *Mary Teresa*, under a new captain and crew, together with documents taken and received from the said bark *Mary Teresa*, at Bahia, to Rio de Janeiro, to Minister Tod, reciting in his letter accompanying said vessel the personal insults and difficulties, involving life and limb, with those in charge of the bark *Mary Teresa*, at Bahia, in consequence of his seizure and conduct in the premises; all of which and more will appear from his (Tyler's) letter of that date and here referred to.

The said vessel, under the charge of Captain Howard and crew, reached the port of Rio de Janeiro on the 29th day of February, 1848, and David Tod, minister at that port, by letter of date 9th of March, 1848, gives it as his opinion that Tyler, consul as aforesaid, had erred; that the papers were sufficient to entitle the vessel *Mary Teresa* to bear the American flag, and that he should not have compelled her to haul it down; that he (Tod) had turned the vessel over to one Mr. Parks; that he (Tyler) should not have sent her to Rio de Janeiro against the objections of the supercargo; that his suggestion was based upon the idea that the supercargo wished it, and that if when he changed his purpose or desire, that he (Tyler) knowing or having reasons to know it was so based, should not have sent the vessel to Rio de Janeiro; that the vessel would have to be sent to the United States in ballast; that great expense would attend the same, and the vessel was of less value in the United States than Rio de Janeiro, and no one to hypothecate the vessel for funds to transport her, &c.; which letter is here referred to.

From a letter of James Buchanan, of the Department of State, dated June 3, 1848, it appears that Tyler, consul as aforesaid, wrote a letter of inquiry inclosing copies of all the papers of the *Mary Teresa*, dated 9th of April, 1848, and asking for instructions and advice touching his seizure of the *Mary Teresa*. Mr. Buchanan, in reply, says:

"The Department is satisfied, although his vessel, without being so entitled, bore the American flag, and that no legal proceedings can properly be instituted against her," &c.

He informs the said Tyler, as consul, that the vessel *Mary Teresa* had been taken by Captain Howard to the port of Philadelphia, and that he (Buchanan) in reply to a letter of the district attorney at that place, and that instructions to the same effect were given to him by the Treasury Department, and he was directed to abstain from taking any steps in the case; which letter is likewise here referred to. The letter of the Treasury Department referred to is that of McC. Young, Assistant Treasurer, dated May 31, 1848.

R. J. Walker, Secretary of the Treasury, by his letter of date June 5, 1848, in answer to one from James Page, collector of customs at Philadelphia, of date June 2, 1848, says:

"That the bark *Mary Teresa* was improperly taken possession of and sent to the United States by Tyler, consul aforesaid at Bahia, contrary to the wishes of her owner, and that the acts of the consul are explicitly disavowed by the Government; that the arrival of said vessel at that port is not to be treated as voluntary so as to subject the said vessel to alien duties, and to allow the said vessel to come to entry free of any charge for tonnage and to take a clearance for Baltimore."

Which is here referred to.

The letter of Mr. Buchanan from the Department of State, dated July, 1848, to Henry Leef, shows he had caused the original papers of the said *Mary Teresa*, as per list attached, to be delivered to Hon. Robert M. McLane for transmission to him. On the 14th day of February, 1848, the said Alex. H. Tyler, as consul of the United States at Bahia, summoned and procured, at his own instance, Joseph Swift, in conjunction with two other American ship-masters, to examine and value the bark *Mary Teresa*, of Baltimore, and that said valuers placed the value of said bark at fifteen thousand silver dollars, while said vessel lay at anchor in the said port of Bahia; also their certificates to an inventory of articles attached to her at the time; which are here referred to and marked H. The said John McKee, supercargo of the said *Mary Teresa*, on the 7th of February, 1848, propounded his individual claim for damages and losses to the said Tyler as consul aforesaid, growing out of and in consequence of his seizure of said vessel, estimated at \$5,000, which is likewise referred to; also his account rendered and dated at Baltimore, 1st December, 1848, for \$3,300, and marked R and G, and here referred to.

By the affidavit of John McKee, dated the 7th day of January, 1873, the following

facts are deposed to by him: That he was the supercargo of the bark *Mary Teresa* owned by Henry Leef, of Baltimore, Md., when that vessel was taken possession of by Alexander H. Tyler, United States consul at the port of Bahia, Brazil; that as soon as the act of the said consul in seizing her was disavowed by the Government of the United States, the collector of the port of Philadelphia delivered to him, as the agent for the owners, the said bark *Mary Teresa*, which he dispatched to the port of Baltimore; that soon after her arrival at Baltimore she was duly advertised in the public newspapers for sale at auction, and was actually sold at public auction by a regular licensed auctioneer; that there were competitors at the sale; that the business firm of Nathan, Rogers & Company were the highest bidders; that they became the owners, and that afterwards, on their application to Congress, a special act was passed granting them an American register for the said bark *Mary Teresa*, under which she was navigated for several years; that after such sale at auction the said Henry Leef had no interest whatever, direct or indirect, in said bark, as will appear from said affidavit with the papers, and here referred to and marked Z; that the bark *Mary Teresa* sold, as shown by the sworn statement of Henry Leef, at public auction for \$2,500.

The account sworn to and filed with the papers, and marked H and L, for damages and losses on account of the seizure of the bark *Mary Teresa* by the said Tyler, as consul and the representative of the United States at the port of Bahia, Brazil, amounts in the aggregate to \$23,036, and itemized as shown in said account stated, which is here referred to for all needful purposes.

This brings us now to the final question, viz: From these facts, should Congress grant the relief prayed for by the memorialist?

Your committee think not. If claims of this character should be allowed there is no reason why the Government ought not to compensate persons for illegal arrests, wrongful judgments of courts, wrongful acts of military or naval officers either in peace or war, and in all cases where public authority has been abused. The officers of the Government are the common agents of all the citizens, and their wrongful acts can not be made ground of a claim for damages against the Government in favor of its citizens. The rule is different as to foreigners. This claim for compensation for the wrongful acts of the officers and agents of the United States stands upon a different footing, involves different considerations, and requires the application of different principles recognized and sanctioned by international law.

But as to the citizen, the well-recognized principle is that the Government should not be made responsible for the illegal and unauthorized acts of its agents. There are, of course, exceptions to this general rule, which appeal to the legislative discretion for relief. For example, if the wrongful act of the agent has resulted in a benefit or pecuniary gain to the Government, restitution should be made; or if the act of the agent had been sanctioned and approved by the Government, and the agent should be made liable in damages, he would ordinarily be indemnified. In the present case the wrongful act of the consul in seizing and detaining the vessel was neither authorized nor approved by the Government. On the contrary, it was promptly disavowed, and the vessel, as promptly as possible, returned to the United States and offered to be restored to the owner. No benefit whatever accrued to the Government, and the case presents no such exceptional features as would warrant a departure from the general rule of nonliability of the Government for the illegal acts of its agents.

Your committee accordingly report back the bill with the recommendation that it be not passed by the Senate.

